

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: AUTOMOTIVE PARTS
ANTITRUST LITIGATION

Case No. 12-md-02311

MDL NO. 2311

Hon. Marianne O. Battani

HEARING REGARDING DEPOSITION PROTOCOL

BEFORE SPECIAL MASTER GENE J. ESSHAKI
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, May 6, 2015

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35 (Listed appearances are only of attorneys making oral
36 argument on the record before Special Master Esshaki.)

1 Detroit, Michigan

2 Wednesday, May 6, 2015

3 at about 2:55 p.m.

4

— — —

5 MASTER ESSHAKI: Ladies and gentlemen, we are
6 ready. I understand that some agreement has been reached.

7 MR. CHERRY: Yes, Special Master. Steve Cherry
8 from Wilmer Hale representing Denso, and on this occasion
9 speaking on behalf of the defendants in the wire harness
10 cases.

11 As you know, there were three motions; I guess we
12 had two motions on behalf of the defendants, there was a
13 cross motion by the auto dealers that were before you today.
14 We have reached agreement with the auto dealers on a
15 stipulation. There was a little discussion today about the
16 meeting of a particular provision that's confirmed in some
17 e-mails, and with that in mind we're comfortable going
18 forward with the stipulation, which I understand the auto
19 dealers are taking care of filing.

20 MS. ROMANENKO: Correct.

21 MR. CHERRY: And with that in mind, I think our
22 motions are off calendar.

23 MASTER ESSHAKI: Am I to understand that the
24 defendants' motion to establish a schedule for auto-dealer
25 plaintiffs' production of ESI is gone?

1 MR. CHERRY: It is resolved by stipulation.

2 MASTER ESSHAKI: Then that the dealerships' motion
3 to resolve defendants' motion to compel downstream is gone?

4 MS. ROMANENKO: Same, resolved by stipulation.

5 MASTER ESSHAKI: And that's in both the auto dealer
6 cases and the end payor cases?

7 MS. ROMANENKO: Yes.

8 MASTER ESSHAKI: So what's left before me today is
9 the defendants' expedited motion to compel DMS data?

10 MR. CHERRY: That's also resolved by our
11 stipulation.

12 MASTER ESSHAKI: So I have nothing on my original
13 agenda left, and the only thing that we are going to discuss
14 is the deposition protocol?

15 MR. CHERRY: Yes.

16 MS. SULLIVAN: Your Honor, Marguerite Sullivan on
17 behalf of the Sumitomo defendants.

18 We have a number of topics to go through with you
19 today but --

20 MASTER ESSHAKI: Ms. Sullivan, before you start
21 I've been troubled by this and I want you to just -- let you
22 know my thoughts. Okay.

23 My recollection is not always 100 percent clear but
24 as I remember we worked on a deposition protocol, we came
25 very clearly to a solution, there were some open issues that

1 I ruled upon, and subsequent to that we had our status
2 conference, and at the status conference quite frankly,
3 Judge Battani, in my mind, upset the apple cart of what I had
4 been doing, and I recognized it. I want to read to you some
5 of the notes that I have from that proceeding because it
6 relates very much to what we are doing today. It was you and
7 Ms. Romanenko that were arguing about the auto-dealer
8 plaintiffs and the end-payor plaintiffs, as well as
9 Mr. Williams.

10 With respect to the deposition protocol, the deps
11 of end payors, each plaintiff, each part, according to
12 Judge Battani, the deposition of each end payor for each part
13 is an impossibility.

14 Next, the end-payor plaintiffs and auto-dealer
15 plaintiffs buy cars, they do not buy parts, so that the basic
16 information needed across the board should be the same
17 whether it is for wire harness parts or it is for control
18 panels, such that an outline of questions could and should be
19 prepared for all parts, for all defendants, to be asked of
20 the end payors and the automobile dealers. Take one dep of
21 an auto dealer and an end payor with pre-approved questions.
22 Need a script, pre-approved script.

23 She said discovery will be on hold until all
24 defendants are in the case. As far as deps, no deps are to
25 go on as to any party. They must be conducted on behalf of

1 all defendants in a single dep. You will need to prepare a
2 template with common questions and determine who is going to
3 conduct the deps. The defendants are to have 45 days within
4 which to prepare the template and decide who is going to
5 examine the witness.

6 The depositions will be useable in all of the
7 cases, and if there are any special questions that any
8 particular defendant wants to have asked they are to submit
9 them to me and to determine whether they should be included
10 in that particular person's deposition.

11 Now, those are the end of my notes with respect to
12 the deposition protocol. I then issued what I thought was a
13 proper clarification order that said the prior order that I
14 made really was no longer valid because of what Judge Battani
15 indicated in our status conference, and that there is going
16 to be a deposition protocol that stretches across all cases,
17 literally that's what she said, there is not going to be a
18 wire harness protocol, there is not going to be a bearing
19 protocol, there is not going to be wipers protocol, it is one
20 protocol stretching across all cases when you are dealing
21 with the auto-dealer plaintiffs and dealing with end-payor
22 plaintiffs because all they did was buy, sell and purchase a
23 car.

24 So the data that you will receive from each of
25 those different parties, the dealers and the end payors, will

1 be the same no matter if you are asking the question on
2 behalf of the wire harness defendants or the bearings
3 defendants. That's what we need to do.

4 MS. SULLIVAN: So, Master Esshaki, I think the key
5 there is your statement just now that this all applies when
6 you are dealing with end-payor plaintiffs and auto-dealer
7 plaintiff witnesses.

8 So what the issue was that Judge Battani addressed
9 during the hearing, it was a concern that she had that the
10 end payors and the auto dealers had raised previously in our
11 October hearing, it was a concern about defendants in
12 multiple auto parts cases taking duplicative depositions of
13 the same plaintiff witnesses over and over and over again,
14 that was actually the words that the auto-dealer plaintiffs
15 used in October. They were concerned about the same auto
16 dealer witness being examined over and over and over again in
17 29 cases.

18 And so Judge Battani raised the concern at the
19 January 28th status conference and the way she phrased it was
20 she said I'm concerned about an issue, do you take
21 depositions of these plaintiffs in each part case? Again,
22 her concern was do you have duplicative, repetitive
23 depositions where you are asking the same plaintiffs the same
24 questions effectively over and over and over again. And so
25 there was a back and forth really about that issue, and her

1 ruling was no, you cannot do that, you cannot take
2 duplicative depositions of the end-payor plaintiffs and the
3 auto-dealer witnesses in multiple parts cases, and,
4 defendants, you need to work together, you need to come up
5 with a template and go forth with that instruction.

6 And so the defendants have been doing that
7 successfully and we are fine with that. We prepared a
8 protocol that covers end-payor plaintiffs and auto-dealer
9 plaintiff witnesses. It applies to all the defendants in all
10 auto parts cases, all the defendants have signed off on it,
11 and that was our understanding of that discussion.

12 Now, I will say at the very end of that hearing --
13 of that discussion during that hearing I got up and I said
14 this dispute about whether defendants in other auto parts
15 cases can take depositions of the same plaintiff witnesses
16 really only impacts a few of the provisions of the protocol
17 that we had all negotiated and that Your Honor had weighed in
18 on.

19 MASTER ESSHAKI: I recall that.

20 MS. SULLIVAN: Right. And so I got up and I said I
21 think we can accomplish this fairly quickly, we can address
22 these provisions. Mr. Williams agreed, and the auto dealers'
23 counsel also agreed. So we then took those provisions that
24 were specifically impacted by that ruling and we prepared a
25 protocol. We pulled them out of the wire harness protocol

1 and we prepared a separate protocol that covers those
2 depositions. Those are the only depositions that apply to
3 all auto parts cases. They were the only depositions that
4 Judge Battani was worried about, and they have been addressed
5 in that separate ADP or auto dealer -- I'm sorry, end-payor
6 plaintiffs' and auto-dealer plaintiffs' witness protocol.
7 But there are all of these other depositions that need to
8 happen in the wire harness case; direct purchasers, Ford,
9 truck dealers and all the defendants' depositions, and those
10 depositions don't apply and aren't even relevant in all of
11 the other cases, maybe with the exception of Ford but that's
12 a separate issue, but the -- so the protocol -- the wire
13 harness protocol took us ten months to negotiate, we reached
14 agreement on everything with the exception of a few
15 provisions that we raised with Your Honor -- or with you,
16 Master Esshaki, and that governs those depositions, and
17 that's separate and independent from this ruling that
18 Judge Battani made on the end-payor and auto-dealer witness
19 depositions.

20 From our perspective it is not appropriate,
21 necessary or warranted to have one single protocol that
22 governs all witness depositions in all auto parts cases for a
23 number of witnesses. First, it is not necessary. We don't
24 need one protocol for the entire auto parts MDL, we already
25 have these two protocols. We have -- you know, as I said,

1 all the defendants have agreed on the one that applies to
2 them for all cases. The wire harness protocol is close to
3 being final, it was close to being final in January, it is
4 still close to being final.

5 MASTER ESSHAKI: When you say two protocols, what
6 do you mean?

7 MS. SULLIVAN: There is a protocol that governs
8 end-payor plaintiff depositions and auto-dealer plaintiff
9 witness depositions, and what that means is that when there
10 is a deposition taken of an end-payor plaintiff in any case
11 it is governed by that protocol. And so when we, the
12 defendants, in the wire harness case take a deposition of an
13 end-payor plaintiff we have to coordinate with all of the
14 defendants in all of the other cases, and then they cannot
15 take a deposition in any of their other cases of that same
16 plaintiff absent good cause. That was the ruling that
17 Judge Battani made.

18 MASTER ESSHAKI: What's the second protocol?

19 MS. SULLIVAN: Well, and that same protocol governs
20 auto-dealer plaintiff witnesses. Same thing on the
21 auto-dealer plaintiff witnesses, we have to coordinate with
22 all the other defendants.

23 MASTER ESSHAKI: When you're saying two protocols,
24 one is -- you would refer to as the end-payor plaintiff
25 protocol, the other is the auto-dealer protocol?

1 MS. SULLIVAN: No, I apologize. So the first one
2 applies to the entire auto parts MDL, all cases, and it
3 governs end-payor plaintiffs and auto-dealer plaintiff
4 witnesses, that was Judge Battani's ruling. So for those
5 depositions there cannot be duplicative depositions, all the
6 defendants have to coordinate, we all have to agree on our
7 list of questions, et cetera, that protocol governs those
8 depositions just as instructed and just as you ordered in
9 your March 19th ruling.

10 The second protocol is the wire harness deposition
11 protocol, and that does not govern the end-payor and
12 auto-dealer plaintiff witness duplication issue, what it
13 governs is direct purchasers, Ford, truck dealers, the City
14 of Richmond plaintiffs, so the public-entity plaintiffs and
15 all the defendants. Those parties are not parties in all of
16 the 29 cases. That is the protocol that is very detailed in
17 terms of -- for example, how many depositions do plaintiffs
18 get to take of each defendant? We agreed after literally ten
19 months of negotiations that they could take 15 depositions of
20 all of the -- of each of the defendants, except for Leoni,
21 for Leoni they can only take seven.

22 Well, that was an agreement that was reached after
23 much compromise, after much discussion, and it is unique to
24 our case. It is appropriate in our case. We know who the
25 witnesses are at this point, we have been in discovery for

1 two years, it makes sense that we have been able to reach
2 agreement on that term. The defendants in these much, much
3 later cases are years away from having depositions in their
4 cases, they don't necessarily know who the witnesses are,
5 there has been no discovery at all, and so for them, it is
6 not appropriate for them to be bound by the wire harness
7 deposition protocol when the defendants are not even in
8 those -- those defendants aren't even in our case. They need
9 to take the time to negotiate their own terms in terms of how
10 many witnesses can be deposed and other terms that relate to
11 that, where the depositions should take place, et cetera.

12 The plaintiffs are concerned -- I think they will
13 get up and tell you that they don't want to have to negotiate
14 separate protocols --

15 MASTER ESSHAKI: One moment please, Ms. Sullivan.
16 We have people calling in.

17 THE CASE MANAGER: Counsel, can you hear me? State
18 your appearances for the record? Counsel?

19 Mr. Esshaki, they must have put it on mute. You
20 can go ahead.

21 MASTER ESSHAKI: They put us on mute? Okay.
22 That's hardly acceptable, but please continue.

23 As I understand it, you had developed a deposition
24 protocol across all cases, as Judge Battani has instructed,
25 that deals with end-payor plaintiffs and auto-dealer

1 plaintiffs so that one deposition is going to taken, they are
2 not exposed to multiple deps. You have also developed a wire
3 harness deposition protocol that will apply only in the wire
4 harness cases pertaining to non-end-payor plaintiffs and
5 non-automobile-dealer plaintiffs, and it is your posture that
6 that protocol should be confined presently to the wire
7 harness cases because they are unique, they are ready in a
8 stage to proceed, and that future plaintiffs who may not even
9 be in the case today should not be bound to a protocol that
10 they have had no opportunity to put any input into?

11 MS. SULLIVAN: That's correct with one exception,
12 one minor clarification -- it is not so minor, with one
13 clarification, and that is that all automotive parts protocol
14 that we have developed applies to end-payor plaintiffs and
15 auto-dealer plaintiff witnesses. So what it does is it says
16 that when an auto-dealer plaintiff witness deposition occurs
17 all defendants have to coordinate and that same witness can
18 then not be deposed in a later case. What it does not do
19 though is it does not limit the wire harness defendants to
20 one deposition of an auto-dealer plaintiff entity, and that
21 is an important distinction because that was a separate
22 issue.

23 If you recall in January we presented -- we argued
24 and --

25 MASTER ESSHAKI: We thought three.

1 MS. SULLIVAN: That's correct, three 30(b) (1)
2 depositions and 18 hours of 30(b) (6) testimony, and that's in
3 the wire harness case, and those two rulings actually
4 complement each other perfectly well. So when the wire
5 harness defendants take those --

6 MASTER ESSHAKI: Would you please tell me again, it
7 was three 30(b) (1) --

8 MS. SULLIVAN: Three 30(b) (1) depositions and
9 18 hours of 30(b) (6) testimony.

10 MASTER ESSHAKI: Okay.

11 MS. SULLIVAN: You were the one that gave us that
12 number of depositions and Judge Battani's ruling at the
13 January 28th status conference actually complement each other
14 quite well. When the wire harness defendants take those
15 depositions we will coordinate with the other defendants,
16 they will participate if they choose to, and then they cannot
17 later redepose those same witnesses.

18 It can't be the case, however, that
19 Judge Battani -- well, first of all, she didn't intend to, I
20 don't believe, overrule your other ruling, which was the
21 three 30(b) (1) and 18 hours of 30(b) (6), that was not the
22 topic at all that she raised as something that was concerning
23 her. What her concern was was the duplicative nature of
24 multiple depositions taken of the same witnesses in multiple
25 cases. We need three 30(b) (1) depositions of the auto

1 dealers and 18 hours of 30(b)(6) testimony in the wire
2 harness case for all of the reasons that we argued in our
3 briefing and in our oral argument during our hearing on
4 January 21st.

5 MASTER ESSHAKI: Okay. Thank you. Mr. Williams?

6 MR. WILLIAMS: Master Esshaki, I'm going to be
7 brief now because I want to respond --

8 MASTER ESSHAKI: Thank God somebody's going to be
9 brief today.

10 MR. WILLIAMS: Well, I will try. I want to respond
11 to what Ms. Sullivan said because some of it is not right and
12 much of it requires a response.

13 But in my view the threshold issue driving
14 everything else is the dispute between the defendants and the
15 auto dealers that Ms. Sullivan just alluded to, and in my
16 view until that is resolved the rest of this is going to be
17 held up, so I think it would make more sense for the auto
18 dealers to speak now.

19 MASTER ESSHAKI: Sure.

20 MR. RAITER: I'm Shawn Raiter on behalf of the auto
21 dealers.

22 Judge Battani was very clear on January 28th; she
23 did not say there will be one deposition per witness, she
24 said three or four times on this transcript, which you have
25 before you, there will be one deposition per plaintiff. Now

1 the defendants ignore that because they want to come back to
2 really harassing and abusing the discovery process as it
3 relates to the automobile dealer plaintiffs.

4 Let me just give you the citations because they are
5 in the record, Mr. Special Master, they are very clear.
6 Judge Battani said at page 24, "and this can all be done in
7 one deposition of a named plaintiff", page 24. Page 24
8 again, "I mean, if we have to be innovative we will be
9 innovative but that there will be one deposition", page 24
10 again. Page 26, "I want you to have the opportunity to
11 ask -- to get the information that you need and at the same
12 time only do a single deposition of most of these named
13 plaintiffs", that's page 26.

14 So what they have done, the defendants have now
15 taken that, they ignore it, they don't want to abide by that.
16 They want to say well, what she really meant was no
17 duplicative depositions of the same witness. That's not what
18 she said. She made it very clear and you did when you
19 started this by reading your own notes that there should be a
20 single plaintiff for each -- a single deposition for each
21 named plaintiff unless there's good cause shown, and the
22 judge said that in her --

23 MASTER ESSHAKI: What about the difference between
24 the 30(b)(1) and 30(b)(6)?

25 MR. RAITER: They can choose how they wish to do

1 it.

2 MASTER ESSHAKI: Don't you think they are entitled
3 to both?

4 MR. RAITER: I think they can choose.

5 MASTER ESSHAKI: If you were to take the deposition
6 of an owner of the automobile dealership, I dare say he could
7 not tell you how his backroom where they do all the paperwork
8 works, so you need to take the deposition of the head
9 financial controller of a dealership for that style
10 testimony. They should not be limited to do I take the
11 controller or do I take the owner.

12 MR. RAITER: And they can make that decision, Your
13 Honor, but when you started this you also talked about
14 questions --

15 MASTER ESSHAKI: Wait, wait, wait, that's the point
16 I'm getting at. They should not be limited to saying with
17 respect to this dealer, should I take the president or the
18 CFO. They really need at a minimum to have both.

19 MR. RAITER: Why?

20 MASTER ESSHAKI: Because the CFO is going to be
21 critical to understanding the financial operations of the
22 dealership, purchasing and sales of vehicles, how profit is
23 calculated, rebates and so forth. The owner is going to tell
24 you what his business is, how many cars he buys and so forth.
25 They shouldn't have to choose between the two.

1 MR. RAITER: The CFO can say the same things, but
2 the owner could say on those topics. And the stipulation
3 that you are going to see today provides them with all --
4 over 200 fields of transactional information, basically
5 everything they have asked for from us. We have already
6 produced 250,000 pages of documents, we continue to produce
7 documents relating to the transactions, the acquisitions, the
8 sales of these vehicles. They don't need any more than that
9 quite frankly in our opinion, but in the Optical Disk Drive
10 case, for example, there was an order, we presented that to
11 Your Honor, where the court said you get one deposition per
12 plaintiff, direct purchasers and indirect purchasers, and
13 that's what we believe should happen here.

14 Now, how they decide to do that is up to them, but
15 you started this today by saying what you should do is come
16 up with a set of questions that need to be answered, need to
17 be asked and answered, and then I suppose it would be
18 incumbent on us to identify who can answer those questions in
19 such a deposition, but what they have got before you, this
20 three 30(b)(1) and 18 hours of 30(b)(6) testimony. We have
21 29 cases, we have 45 automobile dealer plaintiffs. If you
22 look at wire harness only, only wire harness, 45 of those
23 plaintiffs, given what they are asking for, that's over
24 1,800 hours of depositions of automotive dealers, 1,800
25 hours. So that would be a year, running consecutively, one

1 year of automobile dealer depositions when they are going to
2 have some much financial information they don't need to take
3 one-tenth of those depositions. Now, that, of course,
4 doesn't include preparation of these witnesses, travel time
5 for everyone, but that's just one case.

6 Now, the protocol that Ms. Sullivan is talking
7 about, the second protocol, what they have actually said is
8 well, in wire harnesses we get to take three 30(b)(1)s and we
9 get 18 hours of 30(b)(6)s, but then in every other case the
10 number of depositions that we are going to take of your
11 automobile dealers would be subject to negotiation, so they
12 are not done there, they are going to come back over and over
13 and over again trying to ask for more depositions, again,
14 then hiding behind this rule of, well, you can't duplicate a
15 deposition for the same witness. Well, there are a lot of
16 these dealerships and there are going to be a lot of these
17 people they could identify to take depositions, and that's
18 what they are going to do, they are going to harass us.

19 MASTER ESSHAKI: Doesn't that fly in the face of
20 what the Judge wanted to do, which was to limit those
21 depositions?

22 MR. RAITER: Which is exactly why we think there
23 should be one deposition per named plaintiff absent a showing
24 of good cause, that's what she said. She didn't say one
25 deposition per automobile dealer witness or per witness, she

1 said per named plaintiff, she said it at least twice. So,
2 Your Honor, you have before you, again, one of these kind of
3 crossroads moments where we'll embark on depositions that
4 will go on for years and years and years. You've heard the
5 defendants here today say we want to get moving, we want to
6 get going forward and get headed toward class certification.
7 The proposal being made right now by Ms. Sullivan and the
8 defendants, at least as to the number of the automobile
9 dealers being subject to deposition or their witnesses
10 subject to deposition, will be completely contrary to what
11 they have said before you today.

12 MASTER ESSHAKI: I have to go back. As I
13 understand the protocol there is going to be -- let's not
14 focus on auto dealers but let's focus on end-payor
15 plaintiffs, there is going to be one deposition of an
16 end-payor plaintiff that is going to stretch across all
17 parts. How many of the auto-dealer plaintiffs -- how many of
18 the auto-dealer plaintiffs' depositions is up in the air for
19 at least this moment but they are going to stretch across all
20 parts, so you are not going to go back to those auto-dealer
21 plaintiffs under that protocol, no one is going back to them
22 again, so the only question is should the auto-dealer
23 plaintiffs' depositions be limited to one per dealer or
24 should they be three 30(b)(1) and 18 hours of 30(b)(6) or
25 should they be something else?

1 MR. RAITER: Yes and no.

2 MASTER ESSHAKI: Give me a compromise.

3 MR. RAITER: Yes and no. Your point about are they
4 going to stretch across all the cases, not according to their
5 second protocol.

6 MASTER ESSHAKI: Well, the second protocol, as I
7 understand it, dealt with -- according to Ms. Sullivan, dealt
8 with non-auto-dealer plaintiffs and non-end-payor plaintiffs.

9 MS. SULLIVAN: May I clarify?

10 MR. RAITER: That's not correct.

11 MASTER ESSHAKI: You may clarify, Ms. Sullivan.

12 MS. SULLIVAN: I think what we are talking about
13 here is the end-payor plaintiffs and auto-dealer plaintiffs
14 witness protocol, and that's the one I explained to you,
15 those witnesses will be covering -- apply to all auto parts
16 cases, all defendants will participate and will be bound by
17 that order. That does not mean though is that the four
18 depositions that we take of the auto-dealer plaintiff
19 entities in the wire harness case will necessarily be the
20 same exact four that the defendants in some later case may
21 choose to take. Let me explain that to you.

22 They cannot take those same four witnesses again,
23 that's correct, they cannot take those same four witnesses
24 again. However, some of the cases are -- each of these cases
25 are unique, and what I mean by that is, for example, in the

1 heater control panel case I represent Sumitomo and Sumitomo
2 sold heater control panels only to Toyota. The conduct at
3 issue in that case I think the evidence will show relates to
4 Toyota, and so in that case the defendants will be most
5 focused on determining whether the auto dealers can prove
6 that they were impacted with respect to purchases of cars
7 that are Toyota cars. There are other cases that don't
8 involve sales to Toyota. For example, the electric powered
9 steering assemblies case, I don't know anything about that
10 case other than the fact that the guilty plea identifies
11 conduct relating to Honda. Presumably in that case those
12 defendants when the time comes will be very focused on
13 determining whether the auto dealers can establish an
14 overcharge and a passthrough with respect to Honda cars, and
15 so the four auto dealers witnesses or depositions that we
16 make take in the HCP case relating to primarily Toyota may
17 not be the same witnesses --

1 because you need to get a 30(b)(6) and then you need to get
2 perhaps an owner.

3 MS. SULLIVAN: May I address that then,
4 Master Esshaki? We actually do need more than one deposition
5 of the auto-dealer plaintiffs' entities for all the reasons
6 we already argued, and frank --

7 MASTER ESSHAKI: They are not going to go back
8 again, it is across all parts.

9 MS. SULLIVAN: Understood, understood. So for now
10 we are talking about how many, putting aside the duplication
11 issue, put that aside for now. For now we are talking about
12 how many can we take? Can we take one or can we take the
13 three 30(b)(1) depositions and the 18 hours of 30(b)(6)
14 testimony that you already ruled would be appropriate in the
15 case?

16 MASTER ESSHAKI: Yes, but that ruling came out
17 before and --

18 MS. SULLIVAN: That's correct, Your Honor, but the
19 Court said --

20 MASTER ESSHAKI: As I said, she overturned the
21 apple cart with that ruling.

22 MS. SULLIVAN: Respectfully we disagree with that.
23 What she was focused on is whether you take the same
24 witnesses over and over and over again.

25 MASTER ESSHAKI: No, that's not what I got from it.

1 I'm sorry, Ms. Sullivan. What I got from it is you are not
2 going to subject an auto-dealer plaintiff to 10, 12, 20
3 depositions, and she wanted it strictly limited to one
4 deposition across -- one deposition, I'm not going to say
5 that for the auto-dealer plaintiffs, I said that clearly for
6 the end payors, one deposition across all parts. With
7 auto-dealer plaintiffs I can see that there is a problem if
8 you are limited to selecting one witness and one witness only
9 because you may need to get the owner of the dealership and
10 you may need to get the CFO.

11 MS. SULLIVAN: You may also need salespeople, and
12 the reason I say that is some of these dealer plaintiffs are
13 extremely large. For example, McGrath Automotive Group,
14 Incorporated has hundreds of employees, it has four
15 dealerships, four separate dealerships, and it sells nine
16 different brands of cars. Commonwealth Motors, for example,
17 has 300 employees, three dealerships, and it sells GM,
18 Nissan, Honda, Kia and VW cars. We know that the OEMs are
19 very different and they sell their cars very differently;
20 some have certain incentives, others don't have those
21 incentives, and all of that makes a difference in terms of
22 whether the auto dealers will be able to establish that they
23 paid more for their cars and whether the end payors will be
24 able to establish that they paid more for their cars. And
25 you may have different people in these dealerships that are

1 handling procurement from VW than procurement from Nissan,
2 two totally different OEMs.

3 And so, you know, again, we absolutely need a
4 30(b) (6) deposition and we believe that 18 hours, the
5 compromise that you ruled on back in January, was the
6 appropriate amount of time. And we absolutely need 30(b) (1)
7 depositions, and we don't believe that one 30(b) (1)
8 deposition would be appropriate for these reasons --

9 MASTER ESSHAKI: Counsel, I think she has conceded
10 that -- what Judge Battani's instruction was to limit the
11 number of depositions in the auto dealers, not four witnesses
12 in this -- in the wire harness cases and then four witnesses
13 in the heater cases and four witnesses in the windshield
14 cases, it is across the board. The only question is how many
15 can you live with?

16 MR. RAITER: Your Honor, again, let's just back up.
17 She has gone back to the three 30(b) (1)s and the 18 hours of
18 30(b) (6). Just for a reference point, what the defendants
19 want for 30(b) (6) hours of their own people, the people who
20 engaged in these conspiracies and who went to jail and
21 pleaded guilty and paid fines, they want to give us 21 hours
22 of 30(b) (6), but yet they want 18 hours from some car
23 dealership about how you sold your cars.

24 Now, what's changed since then? A couple of
25 things. One, we withdrew parts from all cases, so parts

1 were a big part of the number of witnesses and how we
2 purchased parts and how we sold parts, those are out of all
3 of these cases, so that's a big change. Number two, the
4 stipulation that will be entered soon later today or tomorrow
5 but what we are producing to them handles this information.
6 For example, every month a car dealership usually should be
7 making a report to an OEM which summarizes what they sold,
8 sales, profits, their monthly OEM reports, and we have agreed
9 to produce those. They are going to have that information
10 across all the different brands, across all the different
11 makes.

12 We have agreed that we will use our own consultant
13 to go extract the DMS data that was the subject of obviously
14 the motions that have now been withdrawn before you. So what
15 they are going to have is a ton of information that addresses
16 the vast majority of the legitimate issues that they could
17 raise at this point. So from there what do we do? I think
18 we could do a couple of different things; we could continue
19 to meet and confer about numbers, we could talk about styles
20 of depositions, whether they are 30(b)(1)s or 30(b)(6)s, or
21 we could look at a total number of hours, but right now our
22 position is 39 hours for a single automobile-dealer plaintiff
23 to be deposed in this case, in this setting, given the
24 direction of the Court is unreasonable, it is burdensome, and
25 it is abusive.

MASTER ESSHAKI: All right. Here is what I'm thinking. I would like the defendants to provide plaintiffs with an outline of areas they intend to examine a witness on in the automobile dealer cases, and I would like the automobile-dealer plaintiffs to select the person within their organization who can best respond to the areas that will be covered in the examination. However, I am going to give with respect to automobile-dealer plaintiffs one 30(b) (6) and one 30(b) (1). If you need more you come back and give me good cause and I will do it. Are we clear? I just want to be clear.

24 And then with respect to the -- it is understood
25 that the deposition protocol does not apply outside of the

1 wire harness cases except for the limitations on the numbers
2 of deps of the end payors and auto dealers, it does not apply
3 to OEMs, it does not apply to suppliers, it does not apply
4 to -- that is not before us, that has not been discussed.

5 Mr. Williams, you look puzzled?

6 MR. WILLIAMS: No, I don't think I'm puzzled. I
7 think you clarified. Yes, I think it explicitly reserves
8 whatever we do with OEMs and others.

9 MASTER ESSHAKI: Right.

10 MR. WILLIAMS: But the --

11 MASTER ESSHAKI: Who is going to work on it?

12 MR. WILLIAMS: That's what I wanted to come back
13 to. You said we have a separate protocol for the end payors
14 and dealers, we don't yet because --

15 MASTER ESSHAKI: I agree.

16 MR. WILLIAMS: -- one of the things the defendants
17 did after they left last time was to increase the hours any
18 person who bought a car will be deposed to 14 hours so that
19 you, for example, would spend 14 hours being examined about
20 buying a car, and their witnesses are only subject to seven
21 hours, that is absurd, so that can't be.

22 Second, and this is an important point, and I
23 apologize because it is late, but in the colloquy before you
24 had with Ms. Sullivan I heard it said this protocol doesn't
25 bind any plaintiffs who come in the future. That's not true.

1 This protocol explicitly bind plaintiffs who come in the
2 future because that's what the defendants wanted, and that's
3 not unusual. When we do these cases frequently you can't
4 wait to see who shows up in six months because Ford is here
5 now but maybe someone comes later, you don't start over then,
6 so we build things in, as their draft does, that says a
7 plaintiff group means end payors, dealers, directs and any
8 other class case that's filed. An individual means an
9 individual like Ford and any others who later join the case,
10 but they are bound.

11 So the reason I'm saying all of this is what's
12 being contemplated is this one protocol that applies to auto
13 dealers and end payors in every case so every defendant in
14 every case can depose us, but we are somehow supposed to
15 start all over again in every case and negotiate again, and
16 that's wrong. So what we believe is there should be one
17 protocol now for everything, it applies to wire harness,
18 that's negotiated, that's done. These are not unique cases.
19 Certainly as it relates to us and the auto dealers, we bought
20 a car. As it relates to the number of depositions, we have
21 all done this so many times, I think it is 15, that's pretty
22 much the standard in all of these cases. If any particular
23 party has a reason why it doesn't apply they can show cause
24 why it shouldn't apply.

25 So our proposal is rather than these two protocols,

1 one that applies to two plaintiff groups only in all cases,
2 we get deposed in all cases but we can't take depositions in
3 the other cases because we are supposed to start over again
4 and negotiate? Let's use the product of what we did now,
5 make it a universal protocol that applies in each case and go
6 forward that way.

7 MASTER ESSHAKI: How could you bind somebody to a
8 deposition protocol who is not involved in the case today?

9 MR. WILLIAMS: You do it in the same way that the
10 defendants have sought and we have agreed to bind plaintiffs
11 who are not yet here. You do it in the same way that in
12 numerous MDLs an order is entered at the beginning of the case
13 that says absent good cause this is the rule for all parties
14 here now or parties who join in the future, and if someone
15 has a good -- a real reason, they present it then, but you
16 can't start over again each time because then the wheels of
17 progress never move, you are just stuck because somebody says
18 well, I have some new, different, innovative idea.

19 We have talked since the case began and it is quite
20 some time ago about templates that would govern these cases.
21 All the work -- I can't even imagine the hours the defendants
22 and the directs and the dealers and we have spent on this
23 document. The suggestion that we would do that all over
24 again 29 times, it doesn't make any sense and it isn't
25 consistent with rule one, it is not consistent with the 1407

1 transfer, these cases are not all unique, they are all part
2 of one MDL and all of us, and the Court more than any of us,
3 share the interest in getting this thing moving efficiently,
4 and the way to do that is we've got one set of rules and
5 anyone who has a good reason to deviate from it has an
6 opportunity to tell you, Master Esshaki, why that's the case,
7 but beyond that we now have the rules, we can all go forward
8 and take depositions because we know plaintiffs are entitled
9 to take depositions in 10, 12, 15 cases, but unless we get
10 protocols entered in those cases we can't, so it is just not
11 fair that they can depose us in all the cases and we can't
12 depose them, they are not years behind. I mean, I'm somewhat
13 embarrassed to say but frankly wire harness discovery is not
14 significantly advanced beyond the other cases. All the other
15 case have DOJ productions, we can start taking depositions in
16 many of these cases but for the lack of a protocol governing
17 those cases.

18 MASTER ESSHAKI: Mr. Williams, would you tell me
19 what it is that you would -- we have agreed on this protocol
20 for auto dealers and end payors in the wire harness cases,
21 and you want another protocol in all cases for all
22 plaintiffs?

23 MR. WILLIAMS: Not another. I want one protocol
24 for all plaintiffs and all defendants for all cases. That
25 doesn't mean I'm deposing you in five cases at once, it means

1 each case is governed by that universal protocol, the rules
2 in that protocol apply across the board.

3 MASTER ESSHAKI: I have to take this in two bites
4 because of the way Judge Battani set this up. I think there
5 has to be a protocol that applies to end payors and to
6 auto-dealer plaintiffs as we have discussed. I would
7 entertain a motion to have a protocol for all plaintiffs, all
8 cases.

9 MR. WILLIAMS: For all plaintiffs, all cases or all
10 parties all cases?

11 MASTER ESSHAKI: All parties all cases.

12 MR. WILLIAMS: So I think we are not far apart
13 because my suggestion is that protocol for the end payors and
14 the dealers it sounds to me may have just been completed. I
15 don't know the compromises are final and maybe they are not
16 but --

17 MASTER ESSHAKI: I don't either but I want to have
18 two of them because this one was specifically ordered.

19 MR. WILLIAMS: Understood. So if there are two,
20 have one that applies to end payors and auto dealers and one
21 that applies to everyone else.

22 MASTER ESSHAKI: Ms. Sullivan?

23 MS. SULLIVAN: Special Master Esshaki, the wire
24 harness defendants' primary concern about having effectively
25 the wire harness protocol be expanded to all cases is that

1 the other defendants have not had an opportunity to negotiate
2 for the ten months or longer now that we have been
3 negotiating the terms of that protocol.

4 MASTER ESSHAKI: But put a carve-out that says if
5 they have got some reason to deviate they can come to me for
6 good cause shown. All right. There may be some out there
7 that doesn't fit within our mold, and we have to make an
8 exception.

9 Counsel?

10 MR. SPERL: Good afternoon, Your Honor. This is
11 Andrew Sperl for truck and equipment dealer plaintiffs.

12 Very quickly, we are negotiating with the
13 defendants the number of depositions for the truck and
14 equipment dealer plaintiffs because they are differently
15 organized than for instance the auto dealers.

16 Just as a brief point of clarification, it would be
17 our position that Judge Battani's reasoning that dealership
18 plaintiffs should only be subjected to one or limited
19 depositions across different actions would also apply to the
20 benefit of truck and equipment dealers even though we are now
21 in fewer actions, we are only in wire harnesses and bearings.
22 I just wanted to make the point that that principle of
23 non-duplicative discovery would apply even though we are also
24 in those fewer cases.

25 MASTER ESSHAKI: If that comes up I think she has

1 made clear it is going to be limited discovery, it is not
2 going to be duplicative.

3 MR. SPERL: I agree. I just wanted to make sure
4 the record was clear. Thank you.

5 MASTER ESSHAKI: Counsel?

6 MR. SPECTOR: Special Master Esshaki, Gene Spector
7 on behalf of direct purchaser plaintiffs.

8 MASTER ESSHAKI: Yes, sir.

9 MR. SPECTOR: We agree with Mr. Williams that there
10 should be a single deposition protocol for all the cases.

11 MASTER ESSHAKI: I understand that.

12 MR. SPECTOR: It is the only thing that makes
13 sense.

14 MASTER ESSHAKI: The only way -- the way this has
15 been teed up is it has been teed up so there has to be two.

16 MR. SPECTOR: I understand that and I'm not
17 suggesting otherwise, but we also just wanted to make it
18 clear that our belief is there should be a single deposition
19 protocol. When we were negotiating the wire harness protocol
20 it was clearly with the understanding that it will be the
21 template for everything else that followed in the other
22 cases.

23 MASTER ESSHAKI: I assume that it will be. I
24 assume you will take this and duplicate it in all other cases
25 with some tweaks.

1 MR. SPECTOR: That is exactly what we think and
2 that is exactly what we had hoped, but now it has become a
3 matter of putting together a single deposition protocol that
4 will apply across the board because of what's happened with
5 the end payors and the auto dealers.

6 MASTER ESSHAKI: Well, they may be identical but
7 one is going to say end payors and auto dealers, and the
8 other is going to say everyone else. Okay. Please.

9 MR. SPECTOR: I'm fine with that.

10 MASTER ESSHAKI: One other issue I need to address,
11 Ms. Sullivan, you are going to be angry with me again,
12 14 hours for a buyer of a car is excessive, 7 is going to be
13 the max. That wasn't an invitation to negotiate.

14 MS. SULLIVAN: No, no.

15 MASTER ESSHAKI: I think we have completed
16 everything we need to complete. I want to thank both --

17 MS. SULLIVAN: May I clarify something?

18 MASTER ESSHAKI: Yes.

19 MS. SULLIVAN: I apologize for delaying everybody,
20 but I understand your order is that we have one end-payor and
21 auto-dealer protocol for all auto parts cases, right?
22 Second, we have a protocol that applies to all other
23 depositions that we enter in the wire harness case and then
24 it gets entered with some minor tweaks potentially in all the
25 other cases as well.

1 MASTER ESSHAKI: All other cases.

2 MS. SULLIVAN: So you will have a wire harness all
3 other deposition protocol and then an HTCP one and et cetera.

4 MASTER ESSHAKI: With a backdoor.

5 MS. SULLIVAN: Correct. Thank you.

6 MASTER ESSHAKI: Yes.

7 MR. SQUERI: Just one question. Steve Squeri for
8 Yazaki.

9 With respect to the deposition protocol for the
10 wire harness parties, I would assume that we are talking
11 about trying to have perhaps a uniform protocol but issues
12 like the number of deps -- depositions per defendant, which
13 are going to vary from case to case, and issues like where
14 the depositions are going to take place, which are going to
15 involve a lot of clients' specific issues.

16 MASTER ESSHAKI: I'm going to be busy this summer I
17 think. You will have to come back to me if you can't agree.
18 Okay. You will have to come back if you can't agree.

19 MR. SPECTOR: The other issue that I wanted to
20 raise was one that came up during the hearing this morning,
21 and that is with regard to the subpoenas to the suppliers.
22 We talked about -- if you recall, I mentioned that we were
23 looking to try to seek coordination so that there would only
24 be one subpoena served. If we have to do it by filing a
25 motion to stay that's what we will do.

1 MASTER ESSHAKI: I think you need to do that. It
2 has to be on the record.

3 MR. SPECTOR: We are just trying to get a
4 negotiation going like the OEM subpoenas so that there is
5 only one.

6 MASTER ESSHAKI: You file your motion for stay you
7 will be surprised how quick you will get a phone call.

8 MR. SPECTOR: Fair enough.

9 MASTER ESSHAKI: Counsel? Counsel?

10 MS. LEIVICK: Good afternoon, Master Esshaki.
11 Sara Leivick for Ford Motor Company.

12 I just wanted to raise one issue related to the OEM
13 subpoena that was discussed this morning. Ford has not been
14 involved in the negotiations concerning the OEM subpoena, but
15 as you know, Ford is the only OEM that is a party in the MDL,
16 and Ford is in a unique position to offer insight to you and
17 the other parties concerning the proposed subpoena, the
18 information requested and the potential or likely burden that
19 would be imposed on Ford as a non-party OEM.

20 MASTER ESSHAKI: Well, right now it is scheduled
21 that the plaintiffs are going to file their formal
22 objections, the defendants are going to respond, there will
23 be a reply. I assume you are served and have access to it.
24 I would invite you to file your position statement as well.

25 MS. LEIVICK: Thank you, Master Esshaki, and that

1 was what I was going to ask for.

2 MASTER ESSHAKI: I think that would be helpful.

3 MS. LEIVICK: I just want to clarify that the
4 subpoena has not been served on Ford yet.

5 MASTER ESSHAKI: As far as I know it hasn't.

6 MS. LEIVICK: Right, as far as I know. So we would
7 propose we will submit our response on the same time line as
8 the direct purchaser plaintiffs.

9 MASTER ESSHAKI: You can respond to whatever they
10 file, and I would welcome that.

11 MS. LEIVICK: That we would respond to the subpoena
12 at the same time as the direct purchaser plaintiffs.

13 MASTER ESSHAKI: Thank you.

14 MR. CHERRY: I'm sorry. Steve Cherry.

15 To be clear, Ford is going to offer objections at
16 the same time as the direct purchasers?

17 MASTER ESSHAKI: Exactly, or she is going to review
18 shortly thereafter, she will see what the direct purchasers
19 have to say and she will add her comments.

20 MR. CHERRY: Well, because I think the rest of us
21 are going to want to respond to the direct purchasers but we
22 may also want to respond to Ford, and so we are -- rather
23 than us file two briefs maybe she can file at the same time
24 as the direct purchasers.

25 MS. LEIVICK: That's what I was proposing, that we

1 file on the same schedule.

2 MASTER ESSHAKI: Are you suggesting that the
3 plaintiffs then file their objections in seven days, you file
4 your position in seven days, you file -- the defendants
5 respond in seven days?

6 MR. WILLIAMS: The defendants and the indirect
7 plaintiffs.

8 MASTER ESSHAKI: Right.

9 MR. CHERRY: They will respond at the same time;
10 seven, seven, seven or --

11 MASTER ESSHAKI: I think you want to respond to her
12 as well so it is seven, seven and seven.

13 MR. CHERRY: And we will respond in 14 days.

14 MASTER ESSHAKI: You will respond in 14 days from
15 the original filing, and seven days from Ford's filing.

16 MR. CHERRY: Understood.

17 MASTER ESSHAKI: Okay.

18 MS. LEIVICK: So we will respond in 14 days.

19 MASTER ESSHAKI: And remember, there's three days
20 for a reply.

21 MR. CHERRY: Yes. Thank you.

22 MASTER ESSHAKI: To clarify it, the objections to
23 the OEM subpoenas are going to be filed in seven days, seven
24 days after that Ford is entitled to weigh in with their
25 position, seven days after that the defendants and the other

1 plaintiffs will file their response, three days after that
2 the objecting plaintiffs will file a reply.

3 MS. LEIVICK: Thank you.

4 MASTER ESSHAKI: Are you taking me to task again?

5 MS. SULLIVAN: I have two more requests. One is
6 that we submitted a wire harness deposition protocol just the
7 other day to you, and I would like to request that that be
8 entered today.

9 MASTER ESSHAKI: I need to get some concurrence
10 from opposing counsel.

11 MR. WILLIAMS: I would want to review that and --

12 MASTER ESSHAKI: Frankly, I haven't looked at it.

13 MR. WILLIAMS: If it is the one about us then the
14 one you submitted is not --

15 MS. SULLIVAN: No, no, it's just wire harness.

16 MR. WILLIAMS: I just want to make sure it is the
17 right one.

18 MASTER ESSHAKI: I haven't looked at it myself, and
19 I don't know who it goes to, but I need whoever it is
20 directed to to -- is it a stipulated order?

21 MS. SULLIVAN: Okay. So let me ask this then, may
22 we have a deadline of seven days from today to propose or to
23 submit both the auto-dealer and end-payor protocol and the
24 wire harness protocol, to submit both for entry?

25 MR. WILLIAMS: And I would modify that as follows,

1 and I feel terrible for saying this to the court reporter, if
2 we could just have this afternoon's portion and then have
3 seven days from when we receive it to make sure we are all
4 doing things the way that these orders came?

5 MASTER ESSHAKI: Yes, get the transcript.

6 MR. WILLIAMS: Yes, so from when we get the
7 transcript, and just this end part, not the whole day.

8 MASTER ESSHAKI: I have no problem. I think that's
9 probably best. There's been a lot of discussion today.

10 MR. KANNER: All the pending motions or --

11 MR. WILLIAMS: This is just the deposition
12 protocol.

13 MASTER ESSHAKI: Ms. Romanenko, next time try not
14 to be so wordy, okay? Thank you all.

15 (Proceedings concluded at 3:52 p.m.)

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CERTIFICATION

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3 I, Robert L. Smith, Official Court Reporter of
4 the United States District Court, Eastern District of
5 Michigan, appointed pursuant to the provisions of Title 28,
6 United States Code, Section 753, do hereby certify that the
7 foregoing pages comprise a full, true and correct transcript
8 taken in the matter of Automotive Parts Antitrust Litigation,
9 Case No. 12-02311, on Wednesday, May 6, 2015.

10

11

12

s/Robert L. Smith
Robert L. Smith, RPR, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

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Date: 05/08/2015

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Detroit, Michigan

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